

IN SENATE OF THE UNITED STATES.

FEBRUARY 9, 1846.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT :

*The Committee on Indian Affairs, to whom has been referred the claim of Lewis Evans, praying indemnity for losses sustained by the seizure of his property by certain Cherokee Indians, have had the same under consideration, and now make the following report :*

After a careful examination of the petition, documents, and evidence referred, the committee found the whole facts of the case stated in a report made on the same case to the House of Representatives on the 1st of February, 1838, (No. 519, 2d session 25th Congress,) where it is said that, on the 3d day of January, 1833, John Rogers, an Indian of the Cherokee tribe, leased to Hugh Keener, a citizen of the United States, the Grand Saline, in the Cherokee nation, for three thousand bushels of salt per annum; to be paid monthly, or as might be demanded. This lease was in writing, duly executed by the parties, and provided, among other things, that if Keener should fail to pay the rent, the salt works were to revert immediately back to Rogers. Keener went into possession, and, on the 3d of March, 1834, made a written contract with Lewis Evans, another citizen of the United States, who was a licensed trader in the Cherokee nation, to sell to him, for fifty cents per bushel, all the salt he should make, except the rent to Rogers, to be put up every week in barrels to be furnished by Evans. That John Smallman remained at the saline as the agent, and in the employment of Evans, from about the 15th of March, 1834, till the October following. That Lewis Rogers, son and agent of John Rogers, was there, and knew of the sale and delivery of all, or nearly all, the salt sold and delivered by Keener to Evans, and that no part of the salt set apart as rent was ever bought by Evans. That, during the weighing, marking, and delivery to Evans of fifteen hundred and sixteen bushels of salt, which constitutes the subject of the present claim, John or Lewis Rogers was present most of the time, set up no claim, and made no objection to the sale and delivery to Evans, whose agent, in the presence of John or Lewis Rogers, marked the barrels with the weight, the initials of Evans's name, &c. That Keener was paid in full for the salt. That all or nearly all the rent salt chargeable to Keener from the 1st of March, 1834, to the 1st of September following, had been paid by Keener, and delivered to John or Lewis Rogers. That after the salt was delivered to Evans, his agent went to

Arkansas, and sent six wagons and teams to bring it away. Both Lewis and John Rogers prevented its being taken away, and declared Evans should not have the salt unless he should take it by force. This salt had been delivered to Evans in August, 1834; and before there was an attempt to remove it from the saline, on the 1st of September, 1834, a settlement took place between Rogers and Keener about the rent, when it was agreed that 1,660 $\frac{1}{4}$  bushels were due from Keener to Rogers for rent. Evans was present at this settlement, and entered it in a book for the parties. In discharge of the rent thus due, Rogers took the salt now made the subject of Evans's complaint, and, it is supposed, appropriated the proceeds to his own use. Upon this state of facts, Evans presented a claim to the superintendent of Indian affairs west of the Mississippi, to be remunerated by the government of the United States for the loss he had sustained, claiming it under the provisions of the intercourse act, passed the 30th of June, 1834, and upon the ground that his property had been taken by a member of the Cherokee nation. Francis W. Armstrong was, at that time, the superintendent. He heard all the testimony, and, on the 10th of January, 1835, decided against the claim of Evans, and says: "To close this case, I am clearly of the opinion that Rogers had the right, under his lease, to hold to the salt. It will be recollected, too, that Rogers is a native Cherokee, and that all he looked for was his rent. If Mr. Evans has advanced to Keener the amount of the salt in question, they are both white men, and Evans has his remedy. I therefore conceive that a perusal of the lease or agreement by which Hugh Keener got into the possession of the saline from Rogers, put it out of the power of Keener, or any other person whatever, to deprive Rogers of his rent salt. The salt was never taken from the place where it was made, and was, of course, bound for the rent." This committee do not concur with Mr. Armstrong in his legal conclusions, but, upon other grounds, do in his decision against the rights claimed by Mr. Evans. This opinion of Armstrong was concurred in by the President, yet Evans was not satisfied, and, in January, 1837, presented his claim before the Commissioner of Indian Affairs, C. A. Harris, who submitted the matter to the Attorney General. He decided that the facts did not bring Mr. Evans's case within the provisions of the intercourse act passed 30th June, 1834, and Mr. Harris conformed to the opinion of the Attorney General. The matter was then submitted to the Secretary of War, who reported "that the Secretary of War has given the whole case a careful examination, and has arrived at the conclusion that the decision heretofore made by this office was correct." Again, in February, 1842, Mr. Evans presented his claim before T. Hartley Crawford, Commissioner of Indian Affairs, and, on the 15th of that month, he decided against it. On the next day John C. Spencer, the Secretary of War, said, "It does not come within the provisions of the act of 1834, regulating trade and intercourse with the Indian tribes." From the importunity with which Mr. Evans has pressed this claim, it would seem he had confidence in its correctness, whatever may be thought by others, and is determined to submit to no decisions against him. In April, 1836, he presented his claim to Congress, and it was referred to the Committee on Indian Affairs, but no report made. On the 14th of December, 1837, it was again referred to the Committee on Indian Affairs, and, on the 1st of February, 1838, reported against, but no action taken on the report. In 1842 it was again referred to the same committee, and reported against, and the report ordered to lie. From that time

to the 27th of January, 1846, we hear no more of this claim. The proceedings stated were had in the House of Representatives, but at the latter date an application was made to the Senate. This committee are clearly of the opinion the case made by the petition and proofs "does not come within the provisions of the act of 1834, regulating trade and intercourse with the Indian tribes;" and therefore recommend to the Senate the adoption of the following resolution:

*Resolved*, That the petition of Lewis Evans, praying indemnity for losses sustained by the seizure of his property by certain Cherokee Indians, ought not to be granted, and it is rejected.

